STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 15, 2005
v	No. 252161 Monroe Circuit Court
JOHN PAUL HOWARD, Defendant-Appellant.	LC No. 02-032059-FC

Before: Wilder, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b, for which the trial court sentenced him respectively to twenty to forty years and two consecutive years in prison. We affirm.

Defendant first contends that the prosecution failed to establish exigent circumstances to justify a warrantless search of his motel room. We review de novo a trial court's decision on a motion to suppress. *People v Galloway*, 259 Mich App 634, 638; 675 NW2d 883 (2003). We review a trial court's factual findings to determine if they are clearly erroneous. MCR 2.613(C); *People v Farrow*, 461 Mich 202, 209; 600 NW2d 634 (1999); *People v Snider*, 239 Mich App 393, 406; 608 NW2d 502 (2000).

Exigent circumstances are an exception to the warrant requirement. *People v Cartwright*, 454 Mich 550, 558-559; 563 NW2d 208 (1997). A number of factors may be considered to determine whether the prosecution has established exigent circumstances to justify a warrantless search. *People v Oliver*, 417 Mich 366, 384; 338 NW2d 167 (1983). Each case should be judged on its own facts. *Id*.

We agree with the trial court's finding that numerous factors support a finding of exigent circumstances in this case. The officers were looking for a suspect involved in a carjacking and armed robberies. Officer Joseph Gore saw defendant enter the motel room. The arresting officers had probable cause to believe that defendant committed a carjacking because the stolen vehicle was parked in front of defendant's motel room and the motel manager identified defendant as the possessor of the stolen vehicle. The arresting officers had a reasonable belief that defendant was armed based on information regarding his previous crimes involving guns. The officers also reasonably believed defendant was likely to flee because Officer Gore thought

that defendant saw him in the parking lot. Moreover, defendant had successfully evaded the police for several days after the robbery. Fearing that defendant was aware of his imminent apprehension, coupled with the concern that he would take evasive action, the police opted for a warrantless entry. Considering these factors, we conclude that the trial court did not err in finding sufficient exigent circumstances permitted the police to enter defendant's motel room without a warrant. The motion suppress was properly denied.

Defendant next asserts that the trial court erred in admitting evidence seized in violation of the knock-and-announce statute, MCL 780.656. Defendant contends that, while the police knocked and announced their presence, it was not established that they knocked and announced before attempting to open the door with a key. Defendant failed to preserve this issue by either filing a pre-trial motion to suppress evidence on the ground that it was seized in violation of the knock-and-announce statute, *People v Gentner*, 262 Mich App 363, 368; 686 NW2d 752 (2004) or timely objecting to admission of the evidence at trial, MRE 103(a)(1). Therefore, our review is limited to plain error. *People v Carines*, 460 Mich 750, 763-765; 597 NW2d 130 (1999).

The Michigan knock-and-announce statute provides:

> The officer to whom a warrant is directed or any person assisting him, may break any outer or inner door or window of a house or building, or anything therein, in order *to execute the warrant*, if, after notice of his authority and purpose, he is refused admittance, or when necessary to liberate himself or any person assisting him in the *execution of the warrant*. [MCL 780.656 (emphasis added).]

In this case, the police were not required to "knock and announce" because they made a warrantless entry justified by the exigent circumstances discussed above. "If police officers have a basis to conclude that evidence will be destroyed or lives will be endangered by delay, or if events indicate that compliance with the knock-and-announce statute would be a useless gesture, strict compliance with this statute may be excused." *People v Polidori*, 190 Mich App 673, 676; 476 NW2d 482 (1991); see also *People v Marsh*, 108 Mich App 659, 672; 311 NW2d 130 (1981). Therefore, we conclude there was no error in admitting the evidence seized during this entry.

Finally, defendant contends that the trial court erred in admitting evidence that defendant had stolen a red Jeep. We disagree. The admissibility of evidence is within the trial court's discretion and will be reversed on appeal only when there has been a clear abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998).

While there are substantial limits on the admissibility of evidence of other bad acts, MRE 404(b), the trial court did not err in admitting the evidence in question because it was so connected to the charged crime that it was required to give the jury the complete story. *People v Sholl*, 453 Mich 730, 741-742; 556 NW2d 851 (1996). The red Jeep was stolen two days before the armed robbery and defendant was arrested for possessing the red Jeep four days after committing the robbery. Officer Gore arrested defendant after observing that the red Jeep was parked in front of defendant's motel room and confirming with the motel manager that defendant was in possession of the red Jeep. Defendant's arrest for possessing the stolen red Jeep and the seizure of the items found in the red Jeep ultimately led the robbery victim to identify defendant. Accordingly, the evidence was so entwined with the crime charged that it was necessary to give

the jury the complete story. Accordingly, the trial court also properly concluded that the probative value of evidence was not substantially outweighed by the danger of unfair prejudice. MRE 403.[1]

Although the prosecutor did not strictly comply with the rules by giving pretrial notice of his intent to use this evidence, as required by MRE 404(b)(2), the evidence was admissible and defendant failed to indicate how he would have reacted differently to the evidence had proper notice been given. *People v Hawkins*, 245 Mich App 439, 455; 628 NW2d 105 (2001). Therefore, there was no error requiring reversal.

Affirmed.

/s/ Kurtis T. Wilder
/s/ E. Thomas Fitzgerald
/s/ Kirsten Frank Kelly

[1] Any prejudicial effect was cured by the trial court's instruction on the proper use of this evidence. Jurors are presumed to follow their instructions. *People v McAlister*, 203 Mich App 495, 504; 513 NW2d 431 (1994).